

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of
RECONROBOTICS, INC.

Request for Waiver of Part 90 of the
Commission's Rules

By W. Lee McVey, P.E.
W6EM
PG-12-19879

To: The Chief, Wireless Telecommunications
Bureau and the Chief, Public Safety and
Homeland Security Bureau

**WP Docket No. 08-63
FCC No. DA 10-291**

**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION OF
WAIVER GRANT TO RECONROBOTICS, INC.**

1. The undersigned, pursuant to Section 1.429(f) of the Commission's rules, (47 C.F.R. §1.429(f)) timely files the following Reply in response to the ReconRobotics, Inc. Opposition to my Petition for Reconsideration.

2. The Opposition filed by ReconRobotics on April 14, 2010 is untimely as it was filed more than 15 days following submission of my Petition for Reconsideration¹. The waiver order process was not adjudicatory, therefore the service notification requirement should not be applicable here. The process followed by the Commission was identical to a rulemaking proceeding in that it included comment and reply solicitations. As such, procedures applicable to rulemaking were thought to apply and party notice beyond filing of the Petition via the Electronic Comment Filing System (ECFS) was not required.² The lack of knowledge of the ECFS system filings by ReconRobotics should not be allowed as an excuse for tardy filings. Perhaps, too,

¹ 47C.F.R. §1.429(f)

² 47C.F.R. §1.429(e)

that lack of awareness and knowledge of ECFS by ReconRobotics extends to the just-short-of-one-hundred comments filed earlier in the proceeding.

3. Claims of unlawful marketing, distribution, sale and operation of units were based upon information unknown at the time of the original proceeding and additional actions by ReconRobotics after the proceeding commenced. Certainly well after ReconRobotics was aware of the unlawfulness of some of its activities. Submission of the information at this time, as part of a Petition for Reconsideration, is justified since discovery of the activities is good cause to question appropriateness of the grant of waiver. If for nothing else, as the American Radio Relay League (ARRL) points out in its Reply, it casts doubt on the willingness of ReconRobotics to follow specific, limited usage and marketing instructions of the waiver grant.³ Further, questions of selective enforcement of the Communications Act by the Commission are serious matters and deserve consideration. As in the examples cited in my Petition⁴, it is most certainly malfeasance to overlook egregious violations of the Communications Act and in turn reward violators with 'laundered' licenses, waivers, and gifts of immunity from prosecution after the fact. The grant of a waiver to ReconRobotics, an offer of certification of its device, and license grants to its customers already using the robotic devices is equivalent to awarding station licenses to pirate broadcasters

³ Reply to Opposition to ARRL Petition for Reconsideration at 6., page 6. *American Radio Relay League*, April 16, 2010.

⁴ McVey Petition at 15, pages 10 and 11.

and excusing them from well-deserved, monetary forfeitures and seizure of their equipment.

4. ReconRobotics claims that no showings of error or omission were made in my Petition. That is patently incorrect. The lack of proper consideration of the flawed 900 MHz comparative test results by Commission staff is ample reason alone for its submittal. Further, the author understands that *ex parte* proceedings are often used to interject material after the closure of formal comment through hastily-contrived meetings and conclaves with involved staff. A convenient tactic to ‘slip things under the rug’ as it were. The author is not a mind reader and cannot predict how staff will react to presented materials after such appearances, nor is it clear just how much time is available after discovering their occurrence to prepare responses in advance of an order. In the case of the *ex parte* National Telecommunications and Information Administration (NTIA) correspondence, there was not sufficient time to address its material content, since the order was adopted only *six days* following its receipt and publication in ECFS.⁵ Therefore, it would be impossible under many circumstances, without a filed Petition for Reconsideration, to properly address oversights, omissions and errors made by staff in their deliberations in the consideration of such additional information. Commission failure to recognize a flawed test procedure and flawed test

⁵ Letter from Mr. Karl Nebbia, Office of Spectrum Management, NTIA, to Mr. Julius Knapp, Office of Engineering and Technology, received February 16, 2010.

results are good examples. If data cannot be analyzed, reviewed and presented to point out errors in judgement after an incorrect decision has been made based on that data, then there is *little purpose or basis* for the reconsideration process itself.

5. Section 47C.F.R .§1.429(a) allows any interested party to file a Petition for Reconsideration. ReconRobotics apparently isn't aware that I am a licensed amateur radio operator and questions just how my interests would be adversely affected by the order.⁶ Inclusion of my amateur callsign both on the title and signature pages of my Petition document was thought to be sufficient notice to demonstrate adverse impact of the order.⁷
6. There was no reason for me to participate in the proceeding earlier since comment filings by ARRL and others addressed my concerns at that time. I had no prior knowledge that there would be an ARRL Petition for Reconsideration or that it would concern itself with issues that I identified in my Petition filing. As it turns out, the ARRL Petition for Reconsideration does not sufficiently address all of my concerns.

⁶ ReconRobotics Opposition at B., p. 2.

⁷ I occasionally operate my mobile 70cM station in the Atlanta, Georgia metropolitan area and do not wish to be interfered with nor do I wish to cause interference to the unlicensed robot(s) possibly in use by the Marietta, Georgia police department. Until there is a satisfactory outcome involving use of other spectrum, I will not operate my mobile station in areas where I am aware that the robot unit may be in use in order to help ensure the safety of law enforcement officers.

7. ReconRobotics attempts to explain my claim of its flawed test results as merely the result of a subjective, arbitrary comparison of video signals⁸. Yet, it used that *same arbitrary and subjective standard* in its attempts to claim superior performance of the 432-448MHz band as compared to the 902-928MHz band.⁹ In so doing, it dashes the validity of its own methodology by confessing its arbitrary nature. Thus, by its own admission, any claims made as to superior video signal quality at 432-448MHz must now be considered merely as arbitrary and subjective; and not quantitatively based. The observation of widespread variation and overwhelming inconsistency in observed 900MHz video signal quality versus signal level should have been called into question by the Commission, but was not. Subtle differences would be understandable, but not inconsistencies in signal level across several orders of magnitude for the same relative quality.¹⁰ The Commission should have dismissed the comparative results as being inadequate to reject the 902-928MHz frequency band, but it did not. Additionally, ReconRobotics ignored a staff request to supply comparative data for device operation at 2400MHz.¹¹ ReconRobotics offered no explanation for failure to provide the requested data, even though it originally requested and was granted an experimental license to conduct testing on the 2449-

⁸ ReconRobotics Opposition at C., p. 4.

⁹ ReconRobotics study entitled *Empirical Study of the Effects of 434MHz vs. 915MHz Frequency Band on the Performance of the Recon Scout*, Table 2, P. 8. Attachment to letter to Ms. Marlene Dortch, FCC Secretary, November 3, 2008.

¹⁰ McVey Petition at 13, p. 9. The same, almost perfect video signal quality value was awarded to a signal level of -74dBm, yet one more than 47dB stronger, a difference in signal level in excess of 10,000, was awarded the same "good" rating. This, yet signal strengths ten-fold stronger, -63dBm, were described as "poor," and one at -65dBm as "excellent."

¹¹ ReconRobotics letter to Ms. Dortch, November 3, 2008, p.2.

2455MHz frequency band.¹² The Commission overlooked the failure to comply with its request to compare 2449-2455MHz performance to that of 432-448MHz and granted the waiver anyway. Since ReconRobotics had no data to offer, we are left to conclude that no testing took place either before the Commission request or after it. Or, if tests were conducted, perhaps the results demonstrated performance inconsistent with ReconRobotics' apparent desire to offer only its 432-448MHz military-contract-surplus product.

8. For the reasons noted above, the ReconRobotics' Opposition to my Petition for Reconsideration of Order DA-10-291 should be dismissed. And, the Commission should *rescind* the grant of waiver order with prejudice and pursue prosecution of any violations of the Communications Act by ReconRobotics and its customers.

Respectfully Submitted,



W. Lee McVey, P.E.
W6EM
PG-12-19879
3 Squires Glenn Lane
Leeds, AL. 35094-4564
19 April 2010

¹² FCC Office of Engineering and Technology Report No. 403, grant 0056-EX-PL-2007, WE2XCL, released July 12, 2007.

CERTIFICATE OF SERVICE

My signature below affirms that on April 19, 2010, I placed a true copy of this Reply in the United States Mail, addressed to Mr. Mitchell Lazarus, ReconRobotics' counsel, at his office address below.



W. Lee McVey, P.E.

Mitchell Lazarus, Esq.
Fletcher, Heald and Hildreth, PLC
1300 North 17th Street, 11th Floor
Arlington, VA 22209